



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 767392

Date: MAR. 11, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner seeks to employ the Beneficiary as a cloud support programmer analyst under the second-preference immigrant category for members of the professions holding advanced degrees. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A)(A).

The Director of the Nebraska Service Center denied the petition and the Petitioner's following combined motions to reopen and reconsider.<sup>1</sup> The Director concluded that the Beneficiary did not meet the minimum educational requirements of the offered position or the requested classification. Specifically, the Director found that the U.S. university the Beneficiary attended lacked accreditation when it issued his master's degree.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

## **I. EMPLOYMENT-BASED IMMIGRATION**

Employment-based immigration generally follows a three-step process. First, to permanently employ a foreign national in the United States, an employer must obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL certification signifies that the United States lacks able, willing, qualified, and available workers for an offered position. Section 212(a)(5)(A)(i)(I) of the Act. Labor certification also indicates that employment of a foreign national will not hurt the wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i)(II) of the Act.

If DOL approves an offered position, the employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Finally, if USCIS approves a petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

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<sup>1</sup> The instructions to Form I-290B, Notice of Appeal or Motion, allow combined motions to reopen and reconsider. *See* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into the regulations).

## II. THE REQUIRED DEGREE

An advanced degree professional must have either a “United States academic or professional degree or a foreign equivalent degree above that of baccalaureate,” or a “United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty.” 8 C.F.R. § 204.5(k)(2) (defining the term “advanced degree”). A petitioner must also establish a beneficiary’s possession of all DOL-certified job requirements by a petition’s priority date. *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 160 (Acting Reg’l Comm’r 1977).<sup>2</sup>

Here, the accompanying labor certification states the primary requirements of the offered position of cloud support programmer analyst as: a U.S. master’s degree or a foreign equivalent degree in information science, information technology, computer science, engineering, mathematics, physics, or a related field of study; two years of experience in the offered position, or two years as a customer support engineer, or in a related occupation; and experience with specified technologies. The labor certification also states that, along with experience with the specific skills listed in part H.14 of the certification, the Petitioner will accept an alternate combination of education and experience in the form of a bachelor’s degree followed by five years of experience.

The Petitioner seeks to qualify the Beneficiary for the offered position and the requested classification based on his possession of a master’s degree and at least two years of qualifying experience. The Petitioner does not assert, nor does the record establish, the Beneficiary’s possession of the alternate education or experience.

On the labor certification, the Beneficiary attested to his completion, by the petition’s priority date, of a master’s degree in computer science from a U.S. university, [REDACTED].  
[REDACTED] To support the Beneficiary’s claimed educational credentials, the Petitioner submitted copies of his diploma and transcript indicating that the university awarded him a master’s degree in computer science.

As the Director noted, however, the university lacked accreditation when it issued the Beneficiary’s master’s degree on December 21, 2013.<sup>3</sup> The university did not receive accreditation until April 20, 2015. U.S. Dep’t of Ed., “Database of Accredited Postsecondary Institutes and Programs,” <https://ope.ed.gov/dapip/#/home> (last visited Mar. 3, 2020).<sup>4</sup> According to online government records, the university that issued the Beneficiary’s degree voluntarily closed at the end of 2017.<sup>5</sup>

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<sup>2</sup> This petition’s priority date is June 29, 2015, the date the DOL received the labor certification application for processing. See 8 C.F.R. § 204.5(d) (explaining how to determine a petition’s priority date).

<sup>3</sup> Accreditation is designed to ensure that colleges and universities meet acceptable levels of quality. See U.S. Dep’t of Ed., “Accreditation in the United States,” <https://www2.ed.gov/admins/finaid/accred/accreditation.html#Overview> (last visited Mar. 4, 2020). In the United States, the federal government does not directly accredit colleges and university. Rather, the U.S. Department of Education “recognizes” private, accrediting agencies to ensure that they are reliable authorities on educational quality. 34 C.F.R. § 602.1.

<sup>4</sup> Shortly before the Director denied the Petitioner’s motion, the U.S. Department of Education terminated its recognition of the agency that accredited the university, citing the agency’s noncompliance with numerous regulatory criteria. See U.S. Dep’t of Ed., press release, [https://www.ed.gov/news/press-releases/education\\_department\\_establishes\\_enhanced\\_financial\\_aid\\_participation\\_requirements\\_for\\_ACICS\\_accredited\\_colleges](https://www.ed.gov/news/press-releases/education_department_establishes_enhanced_financial_aid_participation_requirements_for_ACICS_accredited_colleges) (last visited Mar. 4, 2020). Thereafter, the State Council of Higher Education of Virginia (SCHEV) “granted provisional authorization for . . . institutions

As the Petitioner argues on appeal, neither the Act nor regulations expressly require accreditation of U.S. issuers of advanced degrees. In the past, federal courts and the former Immigration and Naturalization Service (INS) required certain employment-based beneficiaries to have degrees from accredited U.S. schools.<sup>6</sup> As the Petitioner notes, however, DOL regulations at that time expressly required the beneficiaries to have degrees from accredited schools. *See, e.g.*, 29 C.F.R. § 60.2 (1968) (certifying professional positions for foreign nationals who received advanced degrees “from an institution of higher learning accredited in the country where the degree was obtained”).

Although DOL regulations have since changed, we find an accreditation requirement for U.S. advanced degrees implicit in current Department of Homeland Security regulations. *See, e.g., Decker v. Nw. Envtl. Def. Ctr.*, 568 U.S. 597, 613 (2013) (citations omitted) (holding that an agency’s interpretation of its regulations controls unless “plainly erroneous or inconsistent with the regulation”).

The employment-based immigration regulations repeatedly describe qualifying degrees with the term “United States,” emphasizing that the degrees must have national acceptance. *See* 8 C.F.R. § 204.5(k)(2) (defining the term “advanced degree” as “any *United States* academic or professional degree . . . above that of baccalaureate,” or a “*United States* baccalaureate degree” followed by five years of experience) (emphasis added); *see also* 8 C.F.R. § 204.5(l)(2) (defining a “professional” as a foreign national with at least a “*United States* baccalaureate degree”) (emphasis added). U.S. schools achieve national acceptance of their degrees through accreditation. *See* U.S. Dep’t of Ed., “Accreditation in the United States,” [https://www2.ed.gov/admins/finaid/accred/accreditation\\_pg4.html](https://www2.ed.gov/admins/finaid/accred/accreditation_pg4.html) (stating that “[a]ccreditation of an institution or program . . . provides a reasonable assurance of quality and acceptance by employers of diplomas and degrees”) (last visited Mar. 4, 2020). Thus, we interpret the regulations to require an accredited school to issue a U.S. advanced degree.

An accreditation requirement also advances public policies. The requirement ensures educational qualifications of foreign nationals seeking immigration benefits and combats the spread of so-called “diploma mills.” These unaccredited U.S. colleges and universities charge fees for issuing bogus or low-quality degrees, often at the expense of foreign students seeking diplomas for U.S. immigration or employment purposes. *See, e.g.*, Tom Bartlett, Karin Fischer, & Josh Keller, “Little Known

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[accredited by the agency and] operating in Virginia to cover the 18 month period .... Allowing them to achieve accreditation with another accreditor.” SCHEV, [https://www.schev.edu/docs/default-source/about-section/council-files/2017-council-files/julydraftminutes\(all\).pdf](https://www.schev.edu/docs/default-source/about-section/council-files/2017-council-files/julydraftminutes(all).pdf) (last visited Mar. 4, 2020) As of July 2017, however, [redacted] was one of only two schools that had not started the accreditation process with a recognized accreditor.

<sup>5</sup> *See* SCHEV, “Closed Institutions (All),” [https://www.schev.edu/results-page?indexCatalogue=full-site-search&searchQuery=Closed%20Institutions%20\(All\)&wordsMode=AllWords](https://www.schev.edu/results-page?indexCatalogue=full-site-search&searchQuery=Closed%20Institutions%20(All)&wordsMode=AllWords) (last visited Mar. 3, 2020); *see also* SCHEV press release discussing its [redacted] 2017 meeting, <https://www.schev.edu/index/agency-info/media-center/news-releases/press-release-list/schev-news/2017/09/15/advisory-council-to-meet-september-18-19-at-norfolk-state-university> (last visited Mar. 4, 2020) (stating that [redacted]).

<sup>6</sup> *See, e.g., Matter of Yau*, 13 I&N Dec. 75 (Reg’l Comm’r 1968), *aff’d*, *Yau v. Distr. Dir. of U.S. INS*, 293 F. Supp. 717 (C.D. Cal. 1968); *Tang v. Distr. Dir. of U.S. INS*, 298 F.Supp. 413 (D.C. Cal. 1969), *aff’d*, 433 F.2d 1311 (9th Cir. 1970).

Colleges Exploit Visa Loopholes to Make Millions Off Foreign Students,” *The Chronicle of Higher Education* (Mar. 20, 2011).

The Petitioner asserts that Virginia’s council of higher education “accredited” the Beneficiary’s university before it issued him a master’s degree. The record, however, indicates that the council certified the university to issue degrees in the state, but did not accredit the university. The Petitioner submitted information indicating that Virginia defines the term “accreditation” to apply only to agencies recognized by the U.S. Department of Education. The council itself recognizes that, as a state agency, it cannot accredit schools, stating that accreditation is a “non-governmental, professional peer review process.” Contrary to the Petitioner’s assertion, the record therefore indicates that the university was unaccredited at the time it issued the Beneficiary’s degree.

Because the university obtained accreditation in April 2015, the Petitioner also argues that the Beneficiary had an advanced degree from an accredited U.S. school by the petition’s priority date of June 29, 2015. An accreditation requirement, however, requires a school to be accredited when it issues a degree. Otherwise, a record would not establish that a degree resulted from completion of an educational program of acceptable quality. As previously discussed, the record here indicates that the university was unaccredited when it issued the Beneficiary’s degree in 2013.

#### IV. CONCLUSION

The record does not establish the accreditation of the Beneficiary’s university when it issued his U.S. master’s degree. Thus, the record does not establish his possession of the qualifying education for the offered position and the requested classification. We will therefore affirm the Director’s decision.

**ORDER:** The appeal is dismissed.